

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
)	
Bright House Networks, LLC)	CSR 6941-E
)	
)	
Petition for Determination of Effective Competition)	
in the Farmington Hills, Livonia, and Novi,)	
Michigan Franchise Areas)	

MEMORANDUM OPINION AND ORDER

Adopted: January 22, 2007

Released: January 24, 2007

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Bright House Networks, LLC ("Bright House") has filed a petition with the Commission pursuant to Sections 76.7, 76.905(b)(2) and 76.907 of the Commission's rules for a determination that its cable systems serving various Michigan communities are subject to effective competition pursuant to Section 623(1) of the Communications Act of 1934, as amended ("Communications Act"),¹ and the Commission's implementing rules,² and are therefore exempt from cable rate regulation in those communities. Southwestern Oakland Cable Commission ("SWOCC")³ filed a comment to the petition to which Bright House filed a response.⁴ Finding that Bright House is subject to effective competition, we

¹ 47 U.S.C. § 543(1).

² 47 C.F.R. § 76.905(b)(4).

³ SWOCC states that it is a consortium representing the cities of Farmington Hills and Novi, Michigan.

⁴ On December 1, 2005, SWOCC filed a brief, one-page letter commenting on Bright House's petition. We note that Bright House's effective competition petition was placed on public notice November 10, 2005. *See* Special Relief and Show Cause Petitions, Public Notice, Report No. 0159 (MB, rel. Nov. 10, 2005). Pursuant to Section 76.7(b)(1), oppositions or comments must be filed within 20 days after the date of public notice of the filing of such petition. Therefore, SWOCC should have filed its comments on or before November 30, 2005. Moreover, pursuant to Section 76.7(b)(1), comments or oppositions must be served on the petitioners and on all persons listed in petitioner's certificate of service. SWOCC comments were not filed in a timely manner, nor was it served on all parties listed on Bright House's certificate of service. Bright House asserts that the SWOCC letter is not a formal opposition to its effective competition petition as the letter does not comply with Commission rules for filing such an opposition. Because SWOCC's comments were untimely filed and not served on all parties, its comments will be regarded as informal and given limited weight and consideration.

grant the petition.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,⁵ as that term is defined by Section 623(1) of the Communications Act of 1934, as amended, and Section 76.905 of the Commission's rules.⁶ The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.⁷

II. DISCUSSION

A. Competing Provider Effective Competition

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if its franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors ("MVPD"), each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds 15 percent of the households in the franchise area.⁸ In its brief one-page comment, SWOCC asserts that it is unaware of effective competition and welcomes competition for its residents.⁹ Turning to the first prong of this test, we find that the DBS service of DirecTV Inc. ("DirecTV") and DISH Network ("Dish") is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in a franchise area are made reasonably aware that the service is available.¹⁰ The two DBS providers' subscriber growth reached approximately 26.1 million as of June 2005, comprising approximately 27.7 percent of all MVPD subscribers nationwide; DirecTV has become the second largest, and DISH the third largest, MVPD provider.¹¹ In view of this DBS growth data, and the data discussed below showing that more than 15 percent of the households in each of the communities listed on Attachment A are DBS subscribers, we conclude that the population of the communities at issue here may be deemed reasonably aware of the availability of DBS services for purposes of the first prong of the competing provider test. With respect to the issue of program comparability, we find that the programming of the DBS providers satisfies the Commission's program comparability criterion because the DBS providers offer substantially more than 12 channels of video programming, including more than one non-broadcast channel.¹² We find further that Bright House has demonstrated that the communities are served by at least two unaffiliated MVPDs, namely the two DBS providers, each of which offers comparable video programming to at least 50 percent of the households in the franchise area. Therefore, the first prong of the competing provider test is satisfied.

⁵ 47 C.F.R. § 76.906.

⁶ See 47 U.S.C. § 543(1) and 47 C.F.R. § 76.905.

⁷ See 47 C.F.R. §§ 76.906 & 907.

⁸ 47 U.S.C. § 543(1)(1)(B); see also 47 C.F.R. § 76.905(b)(2).

⁹ SWOCC Comments at 1.

¹⁰ See *MediaOne of Georgia*, 12 FCC Rcd 19406 (1997).

¹¹ *Twelfth Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, FCC 06-11 at ¶¶ 6, 13, 72-73 (rel. March 3, 2006).

¹² See 47 C.F.R. § 76.905(g).

4. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area. Bright House sought to determine the competing provider penetration in the communities by using a subscriber tracking report that identified the number of subscribers attributable to the DBS providers within the communities on a zip code basis. Bright House asserts that it is the largest MVPD in the communities because its subscribership exceeds the aggregate DBS subscribership for those franchise areas. Based upon the aggregate DBS subscriber penetration levels as reflected in Attachment A, calculated using 2000 Census household data, we find that Bright House has demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in the communities. Therefore, the second prong of the competing provider test is satisfied. Based on the foregoing, we conclude that Bright House has submitted sufficient evidence demonstrating that its cable systems serving the Communities set forth on Attachment A are subject to competing provider effective competition.

III. ORDERING CLAUSES

5. Accordingly, **IT IS ORDERED** that the petition filed by Bright House Networks, LLC for a determination of effective competition in the Communities listed on Attachment A **ARE GRANTED**.

6. **IT IS FURTHER ORDERED** that the certifications to regulate basic cable service rates granted to any of the local franchising authorities overseeing Bright House **ARE REVOKED**.

7. This action is taken pursuant to authority delegated under Section 0.283 of the Commission's rules.¹³

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broecker
Deputy Chief, Policy Division, Media Bureau

¹³47 C.F.R. § 0.283.

Attachment A

Cable Operator Subject to Competing Provider Effective Competition**BRIGHT HOUSE NETWORKS, LLC: CSR 6941-E**

Communities	CUIDS	CPR*	2000 Census Households⁺	DBS Subscribers⁺
Farmington Hills	MI0641	15.92%	49,899	7945
Livonia	MI0795	15.36%	39,235	6025
Novi	MI0642	17.54%	30,906	5421

CPR= Percent DBS penetration

+ = See Cable Operator Petitions